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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 426

WILLIAM HEIKKILA, *Appellant*,

v.

BRUCE G. BARBER, etc., et al.

Appeal from the United States District Court for the Northern District of California

REPLY BRIEF FOR APPELLANT

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REPLY BRIEF FOR APPELLANT

I. INJUNCTION IS AN APPROPRIATE REMEDY IN THIS CASE

The government's argument in *Martinez* v. *Neelly*, No. 218, this Term, that deportation orders are reviewable only in habeas corpus and not by injunction, has no application to this case. That argument admittedly rests entirely on the presence in the Immigration Act of the provision that in deportation cases "the decision of the Attorney General shall be final" (Respondent's Brief in *Martinez*, p. 18). Where this provision is inapplicable, no serious question

can be raised as to the availability of injunctive rev
Such is the situation here.

The finality provision was designed to confine judi
review of the Attorney General's determinations of f
Estep v. *United States*, 327 U. S. 114, 122, footnote 14.
provision comes into play, therefore, when the litiga
attacks the deportation order on such grounds as the
sufficiency of the evidence to support the order. In f
the insufficiency of the evidence was the only ground s
ously pressed by the petitioner in *Martinez*.

The finality provision has no possible bearing, howe
when, as here, the suit attacks not the Attorney Gener
finding under the statute, but the validity of the stat
itself. The provision was designed to insulate, to s
extent, the Attorney General's determination from c
review. It was not intended to insulate the statute f
court review of its constitutionality. The deportation
der here is mandatory once the Attorney General finds
the alien is or was a member of the Communist Party.
finding on that issue is protected by the finality provis
but the statutory provision itself is not.

That a distinction must be made between review of
validity of the underlying statute and review of the adm
istrative decision under the statute also appears from
decisions which permit judicial review of the former is
even when the statute altogether precludes judicial rev
of the latter. *Ludecke* v. *Watkins*, 335 U. S. 160, and se
165, footnote 8; *Yakus* v. *United States*, 321 U. S. 414. Th
cases demonstrate that a limitation on review of the adm
istrative determination does not affect review of the va
ity of the statute. Moreover, the Court has gone a-s
further by permitting injunctive review of the adminis
tive determination in deportation cases of the jurisdictio
fact of alienage. *Perkins* v. *Elg*, 307 U. S. 325; *McGrat*
Kristensen, 340 U. S. 162, and see *Kristensen* v. *McGr*
179 F. 2d 796.

Since the finality provision has no bearing on the is
raised in this case, injunctive review is available under

District Court's general equity jurisdiction (*Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682, 690-691, 712), uncomplicated by the inapplicable finality provision.

If the distinction we suggest is not controlling, we urge, nevertheless, that injunctive review of deportation orders is permitted by section 10 of the Administrative Procedure Act. On this point, we rely upon, without repeating, the argument and analysis in the Petitioner's Reply Brief in *Martinez*.

However, we make the additional observation that the soundness is questionable of those cases which held, prior to enactment of the Administrative Procedure Act, that the finality provision made habeas corpus the exclusive remedy to review deportation orders. The finality provision governs the intensity and scope of judicial review of the administrative decision, but it does not follow that as a result it also governs the form of the remedy. The respect which the finality provision exacts for the administrative determination can be accorded in an injunction suit as readily as in a habeas corpus proceeding.

As a practical matter, to limit the review to habeas corpus would cause a hardship to the alien and his family which admittedly "is of no corresponding advantage to the government." (Brief for Respondent in *Martinez*, p. 44). Indeed, if injunctive review is eliminated, there is also thereby eliminated any possibility of attaining the advantages which the government sees in having the Attorney General or Commissioner of Immigration made parties to the litigation. An injunction suit can be brought in the District of Columbia against these officials; habeas corpus can involve only their subordinate. Thus if the injunction remedy is eliminated, the alien cannot obtain a complete remedy even if he desires one, since theoretically he could, after release on habeas corpus, be rearrested in another District by another subordinate official. Nor can he in habeas corpus join as parties the officials who issued the order he attacks.

In many cases, furthermore, habeas corpus is not an adequate remedy. Years may elapse between the time an alien is ordered deported and the time he is actually taken into custody for deportation, as when problems arise in finding a country which will receive him. Yet for all the alien knows, he may be taken into custody for deportation at any moment. If he cannot challenge the deportation order in this interval, he is left in a hopelessly unsettled situation with respect to arranging his business and family affairs. Moreover, he is subject to the indignities and inconvenience of supervision and reporting requirements (8 U.S.C. 1252(d)), even though the deportation order could be proven invalid, if he only had the opportunity to challenge it.

II. THE ATTORNEY GENERAL OR THE COMMISSIONER OF IMMIGRATION IS NOT AN INDISPENSABLE PARTY.

On this point the government relies on its brief in *Martinez*. We think the government's argument is adequately answered by, and we therefore rely on, the Reply Brief for Petitioner in *Martinez*. In this case as in *Martinez*, the appellant can be granted the relief he seeks without a decree requiring affirmative action by the Attorney General or the Commissioner of Immigration. The unnecessary inconvenience of a rule which would require plaintiffs to bring their suits in the District of Columbia is well illustrated by this case, which involves a resident of California.

III. THE STATUTE IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED.

A. The Nature of the Statute.

The government urges two grounds in support of the validity of the statute: (1) that it does not inflict punishment, and therefore is not a bill of attainder or an ex post facto law; (2) that it represents a reasonable determination by Congress, based on adequate evidence, that the Communist Party is and was an organization which advo-

cates the violent overthrow of the government; therefore, it is argued, the provision is equivalent to the deportation provision sustained in *Harisiades* v. *Shaughnessy*, 342 U.S. 580. An analysis of the statute is, we believe, important to the consideration of these two arguments.

The provision here challenged is the only deportation provision which provides for the expulsion of members and affiliates of a specified, named organization. Other deportation provisions relate to aliens described in terms of their own culpable qualities or the culpable qualities of organizations with which they are or were affiliated.

This provision proscribing the Communist Party by name did not replace the expulsion provisions which had been previously employed against alien members of the Communist Party. The Internal Security Act kept, and the new Immigration and Naturalization Act still keeps, the provision, upheld in *Harisiades*, expelling past and present alien members of any organization which advocates the violent overthrow of the government. There also remains the provision expelling aliens who themselves advocate such doctrine.

In addition, the Internal Security Act added still more expulsion grounds aimed at members of the Communist Party. Thus it provided in sections 22 (1) (D) and (E), and 22(4) (a) for the deportation of (1) aliens who advocate the doctrines of world communism or who ever were affiliated with any organization which advocates such doctrines; and (2) alien affiliates of any organization required to register under the Act (after an administrative hearing before the Subversive Activities Control Board) as "Communist organizations."

Only one legislative explanation has been given as to why Congress thought it desirable to proscribe the Communist Party by name despite the availability of the other mentioned deportation provisions. This explanation, appearing in a report of the Senate Judiciary Committee on the antecedent bill which originated the provision, is

quoted in the government's brief beginning at the foot of page 25. Briefly, it states that the provision was considered desirable because of the difficulty of proving that the Communist Party advocates violent revolution. The government's brief turns this explanation upside down; it insists that Congress thought that it was so easy to prove that the Communist Party is subversive, that it decided to dispense with the wasteful formality of proof.

In any event, there are certain incongruities in the view that the provision represents a Congressional determination that the Communist Party advocates violent revolution. In the first place, the provision applies not only to the Community Party as it was at or before the time of the legislation, but also to the Communist Party of the future and expressly to any successor organization. Obviously, it was impossible for Congress to make a factual finding that an organization engaged in the future in advocacy of violence.

Secondly, the provision proscribes not only the Communist Party of the United States, but also by name the Communist Political Association. Yet the theory of the government in its various prosecutions of Communists under the Smith Act is that the Communist Political Association advocated peaceable change and class collaboration, and that the conspiracy of violent revolution which the government attributes to Communists under the Smith Act, had its inception with the dissolution of the Communist Political Association and the reconstitution of the Communist Party.[1]

Thirdly, the provision does not exempt membership in the Communist Party during the time the United States was engaged in World War II. Yet it is indisputable that during World War II, the Communist Party, so far from

[1] This was the government's theory in the two Smith Act cases which have recently been before this Court. *Dennis* v. *United States*, 341 U.S. 494; *Frankfeld* v. *United States*, No. 204 Misc., this Term, cert. denied, Jan. 19, 1953.

advocating the violent overthrow of the United States government, supported the government in its defense against the aggression of the axis powers.

The provision was not necessary to serve the purpose of expelling aliens who are undesirable because of past or present contact with doctrines of violence. The already-existing deportation provisions were fully adequate for this purpose, and the executive's experience in administering them had so shown. On August 8, 1950, about a month before enactment of the Internal Security Act, the President sent to Congress a message recommending the enactment of new legislation to protect the internal security. He expressly stated therein that the existing immigration laws "permit the Government to exclude or deport any alien from this country who may be dangerous to our internal security". H. Doc. 679, 81st Cong., 2d Sess., p. 4; 96 Cong Rec. 12019. The President requested in his message that the immigration laws be amended to include reporting requirements for aliens ordered expelled but not yet deported (H. Doc. 679, p. 5; 96 Cong. Rec. 12020), but he saw no necessity for requesting an increase in the classes of deportable aliens. Later, in his message vetoing the Internal Security Bill, the President criticized the bill's new exclusion provisions as serving no useful purpose and even as being harmful to the internal security. H. Doc. 708, 81st Cong., 2nd Sess., pp. 8-9; 96 Cong. Rec. 15629.

The provision is irrelevant to determining which aliens are undesirable, because it allows no accommodation for the nature, time or duration of the particular alien's affiliation with the organization. It is immaterial that the alien's association and activities in the Communist Party may have been altogether innocent or passive; that his membership may have been for the most fleeting period of time; that it may have been as remote as 1919, when the Communist Party was formed; or that the alien had long abandoned, if he ever had, Communist beliefs.

For all these reasons, and in its context, the provision here involved cannot be taken to represent a rational determination of the undesirability for residence of certain aliens based on their affiliation with an organization which advocated violent revolution. It represents instead a Congressional decision to punish aliens for membership in the Communist Party, regardless of the present, past, or future nature of the Party. The Senate Judiciary Committee said as much in the report to which we have already referred. It stated: "This provision is new and is designed as a direct identification and proscription of such aliens as subversive." (Sen. Rep. 2230, 81st Cong., 2d Sess., p. 6, repeated in S. Rep. 2369, 81st Cong., 2d Sess., p. 6, accompanying S. 4037, the immediate antecedent of the Internal Security Act). From the tenor of the report, one may be sure that Senator McCarran and the Judiciary Committee as a whole would have been glad, absent doubts as to constitutionality, to recommend legislation enacting outright criminal penalties for affiliation with the Communist Party. The committee recommended the deportation sanction instead only because as to that it did not have such doubts.

B. The Statute Is a Bill of Attainder.

1. *Some Deportation Provisions Can Inflict Punishment*

The only question as to whether this legislation is a bill of attainder is whether it inflicts punishment. The government, relying on *Harisiades*, insists that it does not. The holding in *Harisiades* was that a provision expelling aliens who had been members of an organization advocating the violent overthrow of the government did not inflict punishment and was therefore not ex post facto legislation. It does not necessarily follow, of course, that because the deportation provision involved in *Harisiades* does not inflict punishment, no other deportation provision does or can. The government, however, draws this conclusion from *Har-*

isiades, and in fact that is what *Harisiades* says, although it does not so hold.

We submit that the generalization in *Harisiades* that "deportation is not punishment" is unsound in principle and on precedent. It is not permissible to inquire, in the abstract and conceptualistically, whether expulsion is punishment. The question is whether the particular expulsion provision inflicts punishment, and this can be resolved by applying criteria which have, except in *Harisiades*, been consistently employed by this Court. The application of such criteria will demonstrate that the particular expulsion provision involved in this case does inflict punishment, even if the one involved in *Harisiades* did not.[2] The approach we urge was stated in *Garner* v. *Board of Public Works of Los Angeles*, 341 U.S. 716, 722:

> "Whether legislative action curtailing a privilege previously enjoyed amounts to punishment depends upon 'the circumstances attending and the causes of the deprivation'."

Harisiades recognized that punishment can be inflicted by the imposition of civil disabilities. And indeed a variety of legislative acts have been held to inflict punishment, including acts which permitted the seizure of property (*Fletcher* v. *Peck*, 6 *Cranch* 87), excluded certain persons from various professions or employment (*Cummings* v. *Missouri*, 4 Wall. 277; *Ex Parte Garland*, 4 Wall. 333; *United States* v. *Lovett*, 328 U.S. 303; *cf. Garner* v. *Board of Public Works of Los Angeles*, *supra*), denied access to the courts (*Pierce* v. *Carskadon*, 16 Wall. 234), or exacted a tax (*Burgess* v. *Salmon*, 97 U.S. 381).

Of course, these decisions do not mean that all acts seizing property, excluding persons from professions or employment, denying access to the courts, or exacting taxes,

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[2] It is important to observe that we are here concerned with expulsion of a resident alien, not exclusion of an entering alien. The latter is not protected by the Constitution.

are punishment.' The Court did not find it necessary 't overrule or limit *Cummings* v. *Missouri* in holding tha certain statutes which denied access to the professions wer not punishment. *Hawker* v. *New York*, 170 U.S. 189; *Dei* v. *West Virginia*, 129 U.S. 114.

The meaning of the decisions is that deprivation of *an* privilege may or may not amount to punishment, and tha whether it does or not depends on the nature of the depriv ing legislation and not on the quality of the privilege. S when legislation deprives an alien of the privilege of con tinued residence in the country, the question of punishmen vel non depends on the nature of the expulsion legislation For this reason, the holding in *Harisiades* that a particula statutory deprivation of the residence privilege was no punishment, does not resolve the issue as to whether anoth er statutory deprivation of the residence privilege is pun ishment.

The fact is that if the test of punishment was the charac ter of the privilege rather than the nature of the depriva tion, it would indeed be anomalous to hold that deportation cannot be punishment. For the residence privilege is cer tainly more important to the individual than the ability to practice a particular profession in a particular state One who loses the residence privilege is deprived of liberty almost as much as one who is imprisoned.

The *Harisiades* opinion gives no explanation as to why deportation is not punishment although imposition of lesser civil disabilities can be punishment. It simply relies on the expression of the same generalization in *Mahler* v. *Eby*, 264 U. S. 32, and *Bugajewitz* v. *Adams*, 228 U.S. 585. The deportation provisions involved in the *Mahler* and *Buga jewitz* cases were, under the standards we later describe correctly considered not to be punishment. But the opin ions' verbalizations as to deportation generally went be yond the holdings, were not a correct statement, and should not have been adopted by *Harisiades*.

Mr. Justice Jackson, who wrote the opinion of the Court in *Harisiades*, has recognized the logical difficulties of a generalized rule that deportation is not punishment. In his dissenting opinion in *United States* v. *Spector*, 343 U.S. 169, 178, he stated:

> "Administrative determinations of liability to deportation have been sustained as constitutional only by considering them to be exclusively civil in nature, with no criminal consequences or connotations. That doctrine, early adopted against sharp dissent, had been adhered to with increasing logical difficulty as new causes for deportation, based not on illegal entry but on conduct after admittance, have been added, and the period within which deportation proceedings may be instituted has been extended. By this Act a deportation order is made to carry potential criminal consequences."

The generality in *Harisiades* involves not only logical difficulties, but perpetrates an anachronism when applied to oust application of the bill of attainder clause. One of the familiar penalties imposed by Parliamentary bills of pains and penalties was banishment from the realm. So Parliament decreed the banishment of the Earl of Clarendon in 1667 (19 Car. II, c. 10) and of the Bishop of Rochester in 1722 (9 Geo. I, c. 17; see 46 Col. L. Rev. 849-851). Indeed, the first known instance of the use of the bill of pains and penalties was the banishment of the two Spensers in 1322 (46 Col. L. Rev. at 859, ftnote 7). And the last attempted Parliamentary bill of pains and penalties also contemplated a civil sanction—the removal of Queen Caroline's rights as Queen Consort and the dissolution of her marriage to George IV (*id.* at 851).

Under our analysis, a holding favorable to appellant will not imply that deportation cases must be tried by jury like criminal cases. For we think it is plain that legitimate deportation provisions do not impose punishment of any kind, although the one here involved does. We come next to the

question of what is the test for determining which deportation provisions are punitive.

2. *A Deportation Provision Inflicts Punishment Unless It Establishes Reasonable Standards of Undesirability for Residence.*

Dent v. *West Virginia*, *supra*, held that a legislature could exclude a physician from his profession by raising the educational requirements for medical practitioners. *Hawker* v. *New York*, *supra*, held that a legislature could exclude from the practice of medicine physicians who had theretofore been convicted of felonies. In both cases, the Court held that the statutes did not inflict punishment, but instead merely established qualifications for the medical profession which were reasonably related to the proper practice of the profession. The Court distinguished *Cummings* v. *Missouri* and *Ex Parte Garland* on the ground that the test oaths in those cases exacted requirements which had no reasonable relation to the proper practice of the professions involved.

In *Dent* v. *West Virginia*, the Court explained *Cummings* and *Garland* as follows (at 126):

> "As many of the acts from which the parties were obliged to purge themselves by the oath had no relation to their fitness for the pursuits and professions designated, the court held that the oath was not required as a means of ascertaining whether the parties were qualified for those pursuits and professions, but was exacted because it was thought that the acts deserved punishment, and that there was no way of inflicting punishment except by depriving the parties of their offices and trusts."

The Court also remarked (at 128) that the oath in *Cummings* v. *Missouri* was "the exaction of an oath as to their past conduct, respecting matters which have no connection with such professions," as contrasted to the law being examined which "was intended to secure . . . skill and learning in the profession of medicine."

In the *Hawker* case, the Court made the same analysis. It stated (at 198) of *Cummings* and *Garland*:

> "It was held that, as many of the matters provided for in these oaths had no relation to the fitness or qualification of the two parties, the one to follow the profession of a minister of the gospel and the other to act as an attorney and counselor, the oaths should be considered, not legitimate tests of qualifications, but in the nature of penalties for past offenses."

The Court had no trouble in deciding that this situation did not apply to legislation which resulted in barring from practice a physician who had been convicted of committing an abortion prior to the enactment of the legislation. Such a statute, the Court stated (at 199) was not an imposition of an additional penalty, but the prescribing of reasonable qualifications for those practicing the profession.

This same distinction was made in *Garner* v. *Board of Public Works of Los Angeles, supra*, at 722-724, in which the Court differentiated between a punitive exclusion from state employment and legislative definition of the standards of qualification for employment.

The distinction made by these cases between punishment and the establishment of standards of qualification is that in the latter situation the standards bear a reasonable relationship to insuring that the privilege is not misused. This test is readily applied to situations involving the privilege of aliens to continue to reside in the United States. A deprivation of the residence privilege is not punishment if it represents the establishment of standards reasonably relevant to ridding the country of undesirable aliens. But it is punishment to deprive a resident alien of his residence privilege if the deprivation is not based on any standards at all or on standards which have no reasonable relationship to undesirability.

This is precisely the test which the Court had in mind in a decision which is relied on by *Harisiades* to support the proposition that deportation is not punishment. *Mahler* v. *Eby, supra*, held that it was not punishment to expel an alien who, before enactment of the particular deportation statute, had been convicted of a felony against the security of the state. Obviously, such an expulsion statute was an

establishment of reasonable qualifications for the privil
within the doctrine of *Hawker* v. *New York*, and in f
the Court in *Mahler* relied on *Hawker*. The Court stated
Mahler (at 39) that by the statute Congress

> "was, in the exercise of its unquestioned right, o
> seeking to rid the country of persons who had sho
> by their career that their continued presence h
> would not make for the safety or welfare of society

Surely this decision cannot be taken to mean that the Co
would have sustained as not being punishment an expuls
statute which had no rational relationship to alien un
sirability. Such a statute would not be an exercise of C
gress' "unquestioned right" to get rid of aliens who h
demonstrated their undesirability. Similarly, the dict
in *Bugajewitz*, also relied on by *Harisiades*, must be und
stood in the light of the expulsion statute there involv
That statute required the expulsion of alien prostitu
and thus was an exercise of the right to expel undesira
aliens.

*3. The Deportation Provision Here Involved Inflicts P
ishment Because It Does Not Establish Standards
Undesirability and Has No Reasonable Relevance
Expulsion of Undesirable Aliens.*

Under the tests which we have described, the statute h
involved is clearly punishment. For the statute establis
no standards at all of alien undesirability, a process wh
would necessarily involve a statement of culpable char
teristics. All the statute does is to expel members o
named organization. This is not a definition of standa
or qualifications or even a statement of cause for expulsi
It is merely an identification of the persons to be expel
The situation is precisely as if Congress had listed cert
aliens by name and provided that they should be deport
The situation is the same as the statute in the *Lovett* ca
which, the Court later explained, was penal because it "
not declare general and prospectively operative standa
of qualification and eligibility for public employmen

Garner v. *Board of Public Works of Los Angeles*, *supra*, at 723.

Moreover, the analysis and history of the statute which we presented at the opening of this section demonstrates, we insist, that the statute has no rational relevance to a policy of expelling undesirable aliens. On this very record the statute is being employed to expel an alien who never was a member of an organization which advocated violence and who never himself so advocated. The statute is simply a vindictive product of anti-Communist hysteria.

This deportation provision is, therefore, punishment, and thus a bill of attainder. It would be a vast extension of *Harisiades* to make that decision applicable to this statute. *Harisiades* is, we respectfully submit, questionable on principle and unfortunate in result. *Harisiades* should be reconsidered, but whether or not it is reconsidered, its doctrine should not be extended to apply to this statute.

C. The Statute Is an Ex Post Facto Law.

Since the statute inflicts punishment, it is also invalid as an ex post facto law in its application to appellant. Appellant is being punished under the statute for conduct in which he engaged before the enactment of the legislation.

There is not present here the complication in *Harisiades*, which pointed out that since 1920 Congress had maintained a standing admonition to aliens not to join organizations that advocate violent revolution. Not until 1950, by this statute, did Congress admonish aliens not to join the Communist Party, and Congress did not earlier make a legislative finding that the Communist Party advocated violence. The government's argument that certain courts and the Immigration Service made such a finding in the past is immaterial, for the only appropriate inquiry with regard to the ex post facto clause is what Congress did,—not what the other branches found. Moreover, before and after 1939, the courts certainly questioned whether the Communist Party advocated violence (see our principal brief, pp. 48-51). *Schneiderman* v. *United States*, 320 U.S. 118, was decided in 1943, and it held that it was a tenable position

that the Communist Party did not advocate the violent overthrow of the government. The government itself conceded in *Schneiderman* that there could be conflicting views on the subject.

D. The Statute, on Its Face and as Applied, Violates the First Amendment.

In *Harisiades*, the Court held that the First Amendment did not protect an alien against expulsion for past membership in an organization which advocated the violent overthrow of the government. The Court based this holding on the nature of the advocacy involved, and asserted Congress' right to distinguish between the advocacy of peaceable change and the teaching of violence.

The statute here makes no such distinction. It simply proscribes for an alien an identified political affiliation, whether or not the group advocated violence. Furthermore, the statute was applied here to membership in an organization alleged in the complaint not to advocate violence (R. 5), and to prevent appellant from proving that the group did not so advocate. Under *Harisiades*, therefore, the statute violates the First Amendment on its face and as applied.

Harisiades permitted an extreme interference with aliens' rights of speech and association, since it sustained deportation not for anything the alien himself said or did, but because of the guilty advocacy of the organization. In this respect, *Harisiades* seems inconsistent with *DeJonge* v. *Oregon*, 299 U.S. 353, and *Wieman* v. *Updegraff*, No. 14, this Term. The statute here is an even greater invasion of the First Amendment area than the provision sustained in *Harisiades* and it can not be justified under that decision.

E. The Statute, on Its Face and as Applied, Violates the Fifth Amendment.

It is settled that the alien expulsion process (though not alien exclusion) must supply procedural due process. *Japanese Immigrant Case*, 189 U.S. 86; *United States ex rel Vajtauer* v. *Commissioner*, 273 U.S. 103, 106; *United States*

ex rel Tisi v. *Tod*, 264 U.S. 131, 134; *Wong Yang Sung* v. *McGrath*, 339 U.S. 33. Since there is only one due process clause, it follows that the expulsion process must also supply substantive due process. Moreover, it would be irrational to hold that the one power of Congress exempt from the Fifth Amendment is the deportation power. Even the war power is limited by the Fifth Amendment, and, of course, resident aliens are entitled to substantive due process.

The deportation of appellant exiles him and thus deprives him of his liberty and, in a realistic sense, of his property. On this record, the appellant is being subjected to this deprivation solely because of his past innocent membership in an innocent organization. Furthermore, the statute, as our preceding analysis shows, is not designed to serve any rational policy of ridding the country of undesirable aliens. *Harisiades*, at least, sustained expulsion for past membership in an organization described as having a guilty purpose. But the expulsion here is for membership in an organization which is described only by name, which on this record was an innocent organization, and to whose guilt or innocence the statute is indifferent.

The statute here, therefore, has all the features which made questionable the provisions upheld in *Harisiades*, for it rests on pre-statutory and remote conduct and on the "guilt" of organizational membership rather than on personal guilt. But in addition, the provision and its application have objectionable characteristics which go far beyond those present in the legislation sustained by *Harisiades*.

The government argues that Congress had sufficient evidence to enable it reasonably to conclude that the Communist Party is and was an organization which advocates violent revolution. But it is never reasonable to punish an individual on a finding of guilt which he is given no opportunity to rebut or to defend against. Nor is it reasonable for Congress, with or without evidence, to find facts of